

REMARKS

Initially, Applicants thank the Examiner for the courtesies extended during the recent in-person interview held on May 20. The claim amendments and arguments submitted in this paper are consistent with the amendments and arguments presented during the course of the interview. Accordingly, entry of this amendment and reconsideration of the pending claims is respectfully requested.

Claims 1-5, 5-7, 11, 12, 14, 15, 19, 23-26, 28, 30, 41-48, 50 and 51 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,466,984 issued to Naveh et al, hereinafter *Naveh*. Claims 8-10, 21, 22, 27, 29, 39, 40 and 49 were rejected under 35 U.S.C § 103(a) as being unpatentable over *Naveh*.¹

By this amendment claims 1, 4, 12, 26 and 31 have been amended and claims 52 and 53 have been added.² Claims 41-51 have been cancelled. Accordingly, claims 1-40 and 52-53 are pending, of which claims 1, 12, 26, 31 and 53 are the only independent claims at issue.

The present invention is generally directed to managing network traffic in a quality of service (QoS) enabled network. For example, claim 26 defines determining that the QoS enabled network is configured to transmit and receive network messages using the resource reservation protocol. Next, claim 26 defines extending the resource reservation protocol to include, for each data transmission request, qualitative information including the type of service requested, an application identifier, and the identity of a sub flow of the identified application. Claim 26 further defines receiving a data transmission request for network resources via the resource reservation protocol from a software application that is unable to quantify resource reservations as a result of characteristically short data transmission bursts, the request including qualitative information, evaluating the qualitative information in the request against policy information and returning information based on a result of the evaluation including information that specifies to an upstream sender how to mark packets for classification thereof. Lastly, claim 26 defines determining access to network resources based on a result of the evaluation.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the amendments to the claims are found throughout the specification and previously presented claims, including but not limited to paragraphs [0037]-[0042], [0044]-[0047], [0069] and Figures 3, 6 & 9.

Claim 1 is a method claim similar to claim 26 for managing network traffic. Claim 12 is a method claim similar to claim 26 for requesting network resources. Claim 31 is a system claim generally corresponding to claim 26. Claim 53 is a method claim similar to claim 26.

Applicants respectfully submit that the cited art of record does not anticipate or otherwise render the amended claims unpatentable for at least the reason that the cited art does not disclose, suggest, or enable each and every element of these claims.

35 U.S.C. 102 and 103 Rejections

As discussed during the interview, *Naveh* describes a method and apparatus for policy-based management of quality of service treatments of network data traffic flows by integrating policies with application programs (Title). *Naveh* allows a user to apply a different policy or service treatment (e.g. quality of service (QoS)) to each traffic flow (Col. 4:11-13). For example, a user may assign a higher transmission priority to a stock quote message than to a print transaction (Col. 4:14-16). Similarly, individual frames or packets may be marked so that intermediate devices (e.g. routers, switches, etc.) treat them in a predetermined manner. For instance, packets may be assigned a value in a user_priority field indicating to intermediate devices the packets' transmission priority order (Col. 2:47-67). *Naveh* also teaches using a policy server to map application parameters into network services. Each network service is capable of defining how an application should access the service (Col. 9:42-50).

However, while *Naveh* allows a user to set a transmission priority level for a data flow, *Naveh* fails to teach extending the resource reservation protocol to include, for each data transmission request, qualitative information including the type of service requested, an application identifier, and the identity of a sub flow of the identified application. Moreover, *Naveh* fails to teach receiving a data transmission request for network resources via the resource reservation protocol from a software application that is unable to quantify resource reservations as a result of characteristically short data transmission bursts, where the request includes qualitative information.

Thus, as agreed during the interview, none of the cited art teaches or suggests determining that the QoS enabled network is configured to transmit and receive network messages using the resource reservation protocol, as recited in claim 26. Furthermore, none of the cited art teaches or suggests extending the resource reservation protocol to include, for each data transmission request, qualitative information including the type of service requested, an

application identifier, and the identity of a sub flow of the identified application, as recited in claim 26. At least for either of these reasons, claim 26 patentably defines over the art of record. At least for either of these reasons, claims 1, 12, 31 and 53 also patentably define over the art of record. Since each of the dependent claims depend from one of claims 1, 12, 26, 31 and 53, each of the dependent claims also patentably define over the art of record for at least either of the same reasons.

Although each of the dependent claims patentably define over the prior art of record for the same reasons as their corresponding base claims, many of the dependent claims also independently distinguish over the prior art of record. For example, the prior art of record fails to disclose or suggest...as recited in claim 52.

35 U.S.C. 101 Rejections

Claims 40-51 were rejected under 35 U.S.C. § 101 for reciting non-statutory subject matter. Claims 41-51 have been cancelled, thus rendering the 35 U.S.C. 101 rejections to claim 41-51 moot. It is believed that claim 40 was mistakenly included in the rejection of claims 40-51, as claim 40 does not claim a computer readable medium or a data structure. Accordingly, Applicants respectfully request that the 35 U.S.C. § 101 rejection of claims 40-51 be withdrawn.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 14th day of July, 2008.

Respectfully submitted,

/Gregory R. Lunt/

RICK D. NYDEGGER
Registration No. 28,651
GREGORY R. LUNT
Registration No. 57,354
Attorneys for Applicant
Customer No. 47973

RDN:GRL:ger
GER0000000115V001